

§ 102.31

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(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and

(5) When permitted under 5 U.S.C. 552a(b)(1) through (12), which read as follows:¹

(i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552 ;

(iii) For a routine use as defined in 5 U.S.C. 552a(a)(7) and described under 5 U.S.C. 552a(e)(4)(D);

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(v) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its juris-

diction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with section 3711(e) of Title 31.

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by USPTO in certain circumstances;

(2) 5 U.S.C. 552a(d) requires disclosure of records to the individual to whom they pertain, upon request; and

(3) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by USPTO to the court.

(c) The Privacy Officer shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c) (1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Officer shall make such accounting available to any individual, insofar as it pertains to that individual, on request submitted in accordance with §102.24. The Privacy Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

§ 102.31 Fees.

The only fees to be charged to or collected from an individual under the provisions of this part are for duplication of records at the request of the individual. The Privacy Officer shall charge fees for duplication of records under the Act in the same way in which they charge duplication fees under §102.11, except as provided in this section.

¹ 5 U.S.C. 552a(b)(4) has no application within USPTO.

(a) No fees shall be charged or collected for the following: Search for and retrieval of the records; review of the records; copying at the initiative of USPTO without a request from the individual; transportation of records and personnel; and first-class postage.

(b) It is the policy of USPTO to provide an individual with one copy of each record corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment.

(c) As required by the United States Office of Personnel Management in its published regulations implementing the Act, USPTO will charge no fee for a single copy of a personnel record covered by that agency's Government-wide published notice of systems of records.

§ 102.32 Penalties.

(a) The Act provides, in pertinent part:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. (5 U.S.C. 552a(i)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 102.33 General exemptions.

(a) Individuals may not have access to records maintained by USPTO but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, USPTO will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The general exemption determined to be necessary and proper with respect to systems of records maintained by USPTO, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, is as follows: *Investigative*

Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT.—12. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functions of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

§ 102.34 Specific exemptions.

(a)(1) Some systems of records under the Act which are maintained by USPTO contain, from time-to-time, material subject to the exemption appearing at 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the FEDERAL REGISTER by USPTO which are within this exemption are: COMMERCE/PAT-TM-6, COMMERCE/PAT-TM-7, COMMERCE/PAT-TM-8, COMMERCE/PAT-TM-9.

(2) USPTO hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) to protect materials required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by USPTO, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the